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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William Alsup,
United States Senior District Judge

GOOGLE, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 20-CV-06754-WHA**
	)	
SONOS, INC.,	)	
	)	
Defendant.	)	
_____	)	

San Francisco, California
Thursday, April 20, 2023

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE

APPEARANCES ON NEXT PAGE.

TRANSCRIPTION SERVICE BY:
Dipti Patel, CET-997
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7306 Danwood Drive
Austin, Texas 78759
(847) 848-4907

TELEPHONIC APPEARANCES:

For the Plaintiff:

ORRICK, HERRINGTON & SUTCLIFFE
355 South Grand Avenue, Suite 2700
Los Angeles, California 90071
BY: CLEMENT ROBERTS, ATTORNEY AT LAW
ALYSSA CARIDIS, ATTORNEY AT LAW

LEE SULLIVAN SHEA & SMITH LLP
656 W Randolph Street, Floor 5W
Chicago, Illinois 60661
BY: SEAN M. SULLIVAN, ATTORNEY AT LAW

For the Defendant:

QUINN EMANUEL URQUIHART & SULLIVAN, LLP
50 California Street, 22nd Floor
San Francisco, California 94111
BY: MELISSA BAILY, ATTORNEY AT LAW
LINDSAY COOPER, ATTORNEY AT LAW
JAMES D. JUDAH, ATTORNEY AT LAW
IMAN LORDGOOEI, ATTORNEY AT LAW

Thursday - April 20, 2023 **10:57 a.m.**

P R O C E E D I N G S

---OOO---

THE CLERK: Court is now in session. The Honorable William Alsup is presiding.

Calling Civil Action 20-6754 related to Civil Action 21-7559, Sonos versus Google.

Counsel, please state your appearances for the record beginning with counsel for Sonos.

MR. SULLIVAN: Your Honor, this is Sean Sullivan from Lee Sullivan Shea & Smith on behalf of Sonos.

MR. ROBERTS: Good afternoon, Your Honor. This is Clem Roberts from the Orrick firm. Mr. Sullivan will be presenting today, but I am also here and joined by my partner Alyssa Caridis.

MS. BAILY: This is Melissa Baily for Google. And with me is Iman Lordgooei, Lindsay Cooper, and James Judah. And also from Google, Patrick Weston is on the line.

THE COURT: Anyone else, please?

(No audible response)

THE COURT: Okay. Thank you, and good morning.

I hope this will be a short conference. If anyone cannot hear me well, speak up now so let me know.

Okay. I guess you can all hear me.

The reason I wanted to talk with you concerns the damages

issue on the '885 Patent particularly and what the measure of damages is that Sonos will be presenting to the jury.

And the reason I ask is what is the cutoff time period and is there a per-use measure of infringement that's going to be pursued as opposed to a one-time paid-up license.

So let me turn it over to someone at Sonos. And be sure to identify yourselves.

MR. SULLIVAN: Yes, Your Honor. This is Sean Sullivan on behalf of Sonos. And I can answer those questions for you, Your Honor.

We've established a royalty rate for both the '885 and the '966. And I mention the '966 only because the damages are different. If you remember, the '885 is from the perspective of the playback device, the speaker if you will, while the '966 is from the perspective of the controller device, like a Pixel phone that has the Google Home app installed on it.

So the rates that we have for those from Sonos for the '966 Patent is 82 cents per infringing unit there on the controller. And it's 87 cents on the speaker side.

THE COURT: Now is that -- when you say per-unit, is that a one-time paid up forever or is it each time it's used it rings up 82 cents?

MR. SULLIVAN: Well, it's one time for the speaker. But obviously, they continue to sell the speaker. And same thing with the phones, people continue to download the apps on to

their phones. So it's an ongoing royalty rate, but we're not charging a per-use if that makes sense.

THE COURT: It's ongoing in what sense?

MR. SULLIVAN: Well, they continue to sell infringing products into the future.

THE COURT: All right. Well, let's take an example.

MR. SULLIVAN: Our damages go through last November.

THE COURT: Let's take -- all right.

MR. SULLIVAN: Yeah.

THE COURT: Let's take an example. Let's say that your proof shows the jury agrees with you on 82 cents and 87 cents but that if there's a thousand customers who are infringing, I'm sure there are more than that, but if there are a thousand, then the damages would be 82 cents times a thousand plus 87 cents times a thousand.

But that would not extent into the future. It would be a one-time paid-up license as to that one customer. Is that correct or not?

MR. SULLIVAN: Yes, that's correct if infringement stops. So if they were enjoined, for instance, at the trial and you're looking at the past damages. We're only charging the unit -- the royalty rate per phone and per speaker. We're not charging every time a user uses that speaker over and over and over again. We're not charging multiple times for the use of that speaker --

THE COURT: Well, but what you're saying doesn't make sense to me. You're saying two different things. Let's say that a particular customer continues to infringe for the life of the patent. But what I thought you were saying is, well, since they paid the 82 cents, they're entitled to do that until the end of the license.

So, yes, infringement is continuing as to new customers but as to that customer, they paid the 82 and the 87 and so that entitles them to go all the way to the end of the patents. I'm not saying that. As a ruling, I'm asking you is that what your damages theory is.

MR. SULLIVAN: Yeah. I think it's easier if you talk about it or look at it from the perspective of the device rather than the user. That may be where some of this confusion is coming in, Your Honor.

We only charge the royalty rate --

THE COURT: All right. Look at --

MR. SULLIVAN: -- per device.

THE COURT: All right. Do it from the point of view of a device --

MR. SULLIVAN: Yeah, so we --

THE COURT: -- and a particular speaker and a particular -- each speaker and each device, they pay 87 or 82 cents and they're done and they can continue with their infringement all the way to the end of the patents.

MR. SULLIVAN: That's correct, Your Honor.

Once that device is paid, the 82 cents or the 87 cents if it's a phone, it's covered.

THE COURT: All right. So it's a -- all right, so here's the problem. What if infringement stops because the design-around is valid? How do you adjust these numbers?

MR. SULLIVAN: The numbers stay the same, Your Honor. It would just be for past damages at that point.

THE COURT: Well, I question whether that --

MR. SULLIVAN: There would be no future damages.

THE COURT: I question whether or not -- you know, just take a simpler case in an ordinary patent case, not one like this, but the ordinary case.

Let's say there's infringement for six months, then there's a successful design-around, the patent has 20 years to run, and you're trying to collect for 20 years' worth of infringement even though there's only six months of infringement by saying it's a one-tome paid-up license.

I question whether or not that's valid. Explain to me why that would be valid.

MR. SULLIVAN: Well, Your Honor, just so it's clear, we've only done calculations in this case based on past damages. We haven't calculated anything for the future. We don't know how many products they're going to sell, if any. We don't know if they changed their design if that will be

infringing.

So in our case, they've been infringing since November of 2019. We've only looked at financial information from them November 2019 through November of 2022. So we've only examined past damages.

THE COURT: Well, when you say past damages --

MR. SULLIVAN: If they change their design to a non-infringing way --

THE COURT: -- you're --

MR. SULLIVAN: Go ahead, Your Honor.

THE COURT: Let's say that -- well, let me ask a more practical question. Let me ask this question to Google for a moment.

Does your design-around affect units that have already been sold, speakers that -- or, in other words, is there some way for you to swoop in to the units and the phones and to update the software so that your design-around becomes effective and is no longer infringing, assuming it's --

MS. BAILY: Yes, Your Honor.

THE COURT: -- a (indiscernible) design-around. Go ahead.

MS. BAILY: Sure. This is Melissa Baily for Google.

Yes, Your Honor. We can push the design-around to the existing products, and we have.

THE COURT: Now do you have a corresponding damages

expert with a corresponding damages theory?

MS. BAILY: We have a damages rebuttal expert who critiques Sonos' theory and offers his own theory, but it is not -- it's a lump-sum theory.

THE COURT: What is your theory or is there a theory?

MS. BAILY: The theory is based on a comparable license agreement that the parties agree is technically comparable, as well as costs associated with designing around the patent.

THE COURT: What is the -- can you give me a number?

MS. BAILY: So around a million dollars.

THE COURT: For -- and would that extend into the future or would that extend and how does it tie into the design-around?

MS. BAILY: So --

THE COURT: Explain your theory.

MS. BAILY: Sure. The lump sum would be the lump sum for taking a license to the patents. And Lindsay Cooper is on the line for us, as well.

Lindsay, could you address Your Honor's question about whether the number would change in view of the design-around?

MS. COOPER: It wouldn't, Your Honor. It would stay the same.

THE COURT: Well, all right. So both of you are presenting to the jury damages theories that will not change depending on the answer to the design-around. Is that

correct? Let me start with Google first.

MS. BAILY: That is correct from Google's perspective with our affirmative damages assessment.

THE COURT: All right. And then, Sonos, is that true from your perspective?

MR. SULLIVAN: Your Honor, this is Sean Sullivan on behalf of Sonos.

It is true, but I think just to avoid confusion on what I think Ms. Baily said, the design-around that they've implemented, that doesn't erase any of the past infringement. It just stops it from going forward, the reason being you can infringe by making, using, or selling.

So Google, for instance, with the speakers on the '885 Patent, they have already infringed by selling in the past, right, those infringing speakers. So we want a royalty for each of those sales, okay. So the redesign just stops -- it stops the bleeding.

It just means that they're not going to infringe if that redesign, of course, is found to be non-infringing. If it's infringing, then we're going to need damages for the future or an injunction to stop it.

THE COURT: When you say it's in the future --

MR. SULLIVAN: But redesign doesn't impact --

THE COURT: Wait, wait, wait. When you say for the future, this is where it's a fast glider within ice for me and

I need to understand it. You mean for future units, new units that come on using the product in the future.

MR. SULLIVAN: Yes.

THE COURT: New speakers, new phones; not old phones and not old speakers that they've already paid for with the license that the expert's going to testify to?

MR. SULLIVAN: That is correct, Your Honor.

THE COURT: All right. Okay, all right.

MR. SULLIVAN: That is correct.

THE COURT: So if the design-around is successful and implemented then up to the date of implementation, you would continue to collect for sales of the app and speakers up to that point of the implementation, but thereafter, further sales if the design-around works would be immune from suit.

Is that correct?

MR. SULLIVAN: That is --

THE COURT: I think it is.

MR. SULLIVAN: That is correct, Your Honor. That is correct.

THE COURT: Okay.

MR. SULLIVAN: You got it right.

THE COURT: All right. Well, then here's the reason I asked this. It sounds like from both sides' perspective -- what I'm trying to do, here's what I'm trying to do. I'm playing out in my mind how the trial is going to work.

Do we -- is there a cutoff -- before I get there. Is there a cutoff on your -- what is the cutoff date for damages? There's got to be some practical cutoff date. What is the plaintiff here, Sonos, what are you proposing as your cutoff date? And this is without prejudice to collecting in a supplemental complaint damages in the future if the design-around doesn't work.

MR. SULLIVAN: Yeah, understood, Your Honor.

This is Sean Sullivan again. So we only have financial data from Google on the speaker side going through the third quarter of 2022, so that would be September 30th of last year. We only have financial information related to the '966 Patent and the downloads onto the phone of the Google Home app I think through November of last year.

So, again, we can't offer -- without updated financials from Google, we can't offer any damages beyond those points at this point in time. Does that make sense?

THE COURT: No, I understand what you're saying. Let me make sure Google agrees that those dates are correct.

Ms. Baily, is that correct?

MS. BAILY: My understanding is that what was just said was -- is correct with respect to the financial information that's available to Sonos from which they calculated damages.

THE COURT: All right. So one way to deal with the problem of future damages would be to ask the jury to set a

per -- you know, set a number, either 82 cents or they may say no, no, that's ridiculous, 10 cents, '885 12 cents. Whatever they want to set as a per. And then we could just mechanically apply that to future sales once the financial information is made available.

This is assuming that the plaintiff wins on everything and Google loses on everything here so that what I'm trying to avoid is a second trial on supplemental damages. So what is the best way to get a number that we can mechanically apply to future sales?

Sonos, you go first.

MR. SULLIVAN: Yeah, Your Honor. Sean Sullivan again.

I'm very much in favor of the plan you laid out. In my experience, that's traditionally how we do it. You get a royalty rate, per-unit royalty rate.

Obviously, the jury can only look at and consider what damages we have up until that point. They can't consider the future. But that's something that if an injunction is not issued, that the Court can consider as part of future damages.

THE COURT: All right. Ms. Baily, you said your position is that you want the jury not to do a per-unit but to do a one-time paid-up license forever. Is that correct?

MS. BAILY: That's exactly right. And so our view is it would be prejudicial to ask the jury to set a number per-unit rate on the verdict form when we're going to be presenting a

lump-sum number that accounts for any number --

THE COURT: Well, we can let the jury -- I mean couldn't the jury decide what the -- I've forgotten what do we call this negotiation but this hypothetical negotiation. Each side gets to make their pitch as to what people would really do in these circumstances.

And if the jury decides Google is right, a one-time paid-up license is the way to go, then that's what they would say. On the other hand, they may agree with plaintiff and say, no, no, they would do a per-unit basis. And then I would say on the verdict form if you decide Sonos is right, tell us what the dollar amount would be or the cents amount would be per unit.

Now that way both of you would be happy and both of you could win, but we would avoid having another trial for supplemental damages. Wouldn't that be the way to go?

Let me hear from Sonos first.

MR. SULLIVAN: Yes. Sean Sullivan again, Your Honor.

That would be fine with us.

THE COURT: And how about Google?

MS. BAILY: Melissa Baily for Google.

Generally, that's fine. I just want to flag for Your Honor that our damages expert does also critique Sonos' running royalty. I just want you to be aware of that. His --

THE COURT: So his critique goes -- what are the numbers

his critique comes up with on the running royalty? I'm just curious. Do you know?

MS. BAILY: No problem, Your Honor. I wasn't sure exactly what questions would come up today.

Lindsay, do you have that critique adjustment that we do on hand?

MS. COOPER: Yes. This is Lindsay Cooper for Google.

Critiquing Sonos' expert's numbers, our expert comes up with a range of 1.2 million for one of the patents and 7.4 million for the other patent.

THE COURT: Well --

MS. BAILY: But what's the running -- do the running royalty --

THE COURT: Is there a running number like 82 cents?

MS. COOPER: I don't have that number handy.

THE COURT: But is there one? You don't have to tell me what it is.

MS. COOPER: I'm not positive offhand. I apologize.

THE COURT: Okay. All right.

Okay. This has been very useful to me, so I'm going to change the subject now unless there's something one side or the other feels you should add or subtract from what you've said so far. Plaintiff goes first.

MR. SULLIVAN: Your Honor, this is Sean Sullivan for Sonos.

The only other issue I can think of related to these -- well, there's two things I wanted to mention. One, on the damages, the redesign, Google is using that redesign as part of its damages analysis.

So whether that redesign is infringing or not infringing and whether it's commercially acceptable, that is an issue that Google wants to -- I believe, unless Google tells me differently now but that's an issue that their expert has used to say, oh, well, because we could have designed around and here's the design-around which would be non-infringing and commercially acceptable -- we disagree with that, of course.

But they have this redesign so therefore the damages are a lot lower than what Sonos is asking for. So if we defer the redesign issue to a bench trial like your order seemed to indicate, we might have trouble with that argument happening in front of the jury if we can't try the whole redesign issue whether that's infringing or not to the jury.

Does that make any sense?

THE COURT: Well, so you prefer that the jury decide the redesign issue?

MR. SULLIVAN: Correct.

THE COURT: All right. Let me hear what Google says on this point.

MS. BAILY: This is Melissa Baily for Google.

It is a key part of our damages expert's analysis that

Google could have and in our view in fact did, but that can be a separate question, design-around the patents and the amount of work and resources that it would take to do the redesign. We think that is a critical part of the hypothetical negotiation and of the analysis of damages.

And typically, an expert is permitted to talk about at least hypothetical non-infringing alternatives regardless of whether they've been implemented. And so we do want to present our non-infringing alternatives to the jury in the context of at least our damages analysis.

THE COURT: And so in your view, that would be --

MS. BAILY: In addition, Your Honor -- I apologize, Your Honor. If I could just make one more point.

THE COURT: Sure.

MS. BAILY: Our preference would also be to tell the jury that we did in fact implement it because otherwise, the jury will be wondering why we didn't if it was so simple to do.

And so our preference would be to inform the jury that we had these hypothetical design-arounds available to us at the time in the hypothetical negotiation and that we actually did implement one and this is how much it cost.

THE COURT: Well, so in our -- well, it seems to me then that you're going to be presenting -- and I guess are both sides going to be presenting evidence on whether or not the design-around is effective?

MS. BAILY: So, Your Honor, this is Melissa Baily from Google.

We would -- we're aware of Your Honor's ruling with respect to the redesign, but we do think especially because they have these implications for damages that it would make sense to try it if Your Honor permitted that.

THE COURT: Well, it's a Georgia-Pacific consideration, the ease with which a design-around could be done. Now if I thought the evidence was clear enough under Rule 50, I could take that issue away from the jury and just say I've listened to the evidence and either it is a valid design-around or it's not.

I don't know. I have no idea. I haven't looked at this. I mean you lawyers have kept us so busy, there hasn't been time for me to -- I haven't got a clue what the design-around is.

But I could -- under a Rule 50 standard, I could just instruct the jury at the end, well, you've heard Ms. Baily talk about the design-around, but in the judge's opinion, it's not a valid design-around, still infringes. Or I could say the other. I could say, yes, it is a valid design-around and -- or I could say it's not Rule 50, it doesn't meet the standard and the jury will have to decide.

So to me, that's the normal way this ought to play out is that the jury decides if it's a design-around subject to Rule

50 possibilities. It might go either way against plaintiff or against defendant.

Now let me hear what the lawyers say on that. Plaintiff, you get to go first.

MR. SULLIVAN: Yeah, Your Honor. Sean Sullivan on behalf of Sonos.

I think that would be great, Your Honor. I like that procedure. It will give you a chance to see it all laid out, to give the jury a chance to hear it, as well. I think doing it that way through Rule 50 rather than through a deferred bench trial would be preferable, it sounds like, to both parties. So I -- yeah, I'm on board with that approach.

THE COURT: What do you say, Ms. Baily?

MS. BAILY: Your Honor, to be honest, you know, I haven't consulted with my client about it. But I think, you know, generally that was how we were planning to try the case before we got Your Honor's ruling.

THE COURT: All right. I'm still glad we had this conversation even though it's not as clear-cut as I had hoped.

All right. Let me change the subject a minute.

MR. SULLIVAN: Wait, Your Honor. It's Sean Sullivan on behalf of Sonos. If I could just raise one more damages-related thing and it's more of a housekeeping matter.

But our expert James Malkowski is currently scheduled to be at trial in front of Judge Andrews the same week, May 8th,

in Delaware. I'm not asking you to change the schedule with Your Honor or this case. But given the overlap, I may need some flexibility. We're still trying to work out the details where he could appear and testify in both cases that week.

But I may need to ask for some flexibility from Your Honor and from opposing counsel to make sure I can get him up on the stand in this case --

THE COURT: Well, I'm not going to agree anything yet.

MR. SULLIVAN: Okay.

THE COURT: I'm sorry these experts make so much money that they book themselves for two separate places and I'm not sympathetic to this at all. So right now I'm going to say when you rest your case, you rest your case. And but I'm not going to say no to some small degree of flexibility. But --

MR. SULLIVAN: Thank you, Your Honor. Thank you.

THE COURT: -- anything major, I don't know. I would have trouble with that. Now that goes for both sides. This case, we're going to get it over with in a two-week period. That amounts to about 14 hours of evidence per side plus openings, plus closings.

And I know you can do it. And you're good lawyers, and you'll be able to do it. I'll probably give them one day off around Mother's Day, probably the Monday so they can travel to see their mothers. So we would have nine, five days the first week, four days the second week.

Out of an abundance of caution, I'll try to clear the jury to have a couple of days in the third week in case they need it for deliberations or whatever. But that's all the time I got to give you, and I'm positive you can get it done in that length of time.

So start keeping that in mind and be efficient instead of the way patent lawyers tend to be is to drone on and on. And you're going to have to get right to the point.

Okay. I've forgotten what the -- if my law clerk is on, there was another issue I wanted to raise and now I'm talking on the phone where my (indiscernible) are so I can't --

MS. BAILY: Your Honor, this is --

LAW CLERK: Hi, Judge. The letter brief.

MS. BAILY: Your Honor, this is Melissa Baily for --

THE COURT: Okay.

MS. BAILY: -- Google. I just wonder if I could just be heard one more moment on damages? I understand you want to move on.

THE COURT: All right. Go ahead, please.

MS. BAILY: I apologize. Just to sort of make clear for Your Honor, we had moved for summary judgment on the redesign and I do -- our view is that there really is not any fact in dispute with respect to the redesign. And so, if Your Honor didn't consider that motion for summary judgment at all but --

THE COURT: I'm going to deny it again.

MS. BAILY: Now we're thinking about --

THE COURT: No, no, Ms. Bailey, please be realistic and reasonable. How many other cases do you think I have with one law clerk?

MS. BAILY: Apologies. That's fine, Your Honor. I just didn't know if you --

THE COURT: Yeah, I'm not going to -- I'm denying your motion then if you feel that it's got to be decided on the ground that they're fact issues and I'm going to let it go to the jury and I'll at least wait and see what the evidence is at trial.

But do you know how many thousands of pages you and your -- you know, your client is a big-time user of our court, not just me but I mean a big -- and you should be more respectful of the burden that you and your litigation, Google's litigation imposes on the Court. Sonos, too, but Google even more so.

And the idea that you could think that we would be burning the midnight oil night and day to get your redesign admitted is just wrong. So I'm -- don't get me started here. I'm not going to have that ruled on before trial. It's conceivable I could rule on it during trial, but I'm not promising that. I would like to --

MS. BAILY: Understood, Your Honor.

THE COURT: -- see the evidence.

MS. BAILY: I apologize.

THE COURT: All right. So --

MS. BAILY: Thank you, Your Honor.

THE COURT: Don't apologize. This is what you've chosen to do for a living is patent litigation, but it's a huge -- it's a hundred times more burdensome than the ordinary civil rights case. And it's because of the way the lawyers do this. I don't know why, but it's just burdensome as can be.

Okay. My law clerk, you were in there somewhere and you mentioned something. And what was it again, letter briefs? What was the other thing?

LAW CLERK: That's up next.

THE COURT: All right. Well, let me say to you I can't say never, but letter briefs are not formal motions. And I would prefer that in the future, you stick to formal motions instead of sending me letters or even worse having your paralegals call my courtroom deputy to ask questions.

If you have a formal motion to make, I want you to make it with a brief, a noticed motion and in that formality as opposed to letter briefs. It gets out of hand and pretty soon I just become a pen pal. So I don't want to go down that path again.

All right. I think we've covered everything I needed to cover.

LAW CLERK: Your Honor?

THE COURT: Yes.

LAW CLERK: Pardon for the interruption, but just a quick reminder about jury selection date change.

THE COURT: Didn't I already mention that? We're going to -- Angie asked can the jury office give us the venire on the Thursday after the pretrial conference?

LAW CLERK: Yes.

THE COURT: Okay. We're going to try to pick the jury -- just plan to pick the jury on the day after the pretrial conference, which is on a Wednesday. And then we'll devote Thursday to picking the jury. And then we will -- that will give us a little more time so that on Monday we can start with the opening statements on Monday I believe it's the 8th.

So our jury would be what day, Angie?

LAW CLERK: May 4th.

THE COURT: Jury selection. What?

LAW CLERK: May 4th.

THE COURT: May 4th. And we will most likely have a total of eight jurors. And in that pretrial conference, we'll go over the procedure. I'll give each side some time to ask questions, too. I'll ask the main questions for voir dire, and then each side gets to ask them.

We will not have a questionnaire, so -- Angie, do we have one on hardship?

LAW CLERK: I believe we do, Your Honor.

THE COURT: Okay. So there's a very abbreviated one that we may have, but it won't have questions like have you ever invented anything, have you ever been sued, have you ever been cheated on. I have a good idea, any of those things that the patent lawyers like to know. Those things we may cover it during the real voir dire, but we're not going to have a questionnaire.

So be prepared to do the voir dire on that Thursday.

Let me ask one last question. What did we ever do in this case about ADR? Did I assign you to a magistrate judge for mediation? I can't remember. Plaintiff first, please.

MR. SULLIVAN: Yeah, Your Honor. We've had so many skirmishes with Google with mediation, I can't remember if we did one in connection with this case or not. It wouldn't surprise me if we did, but I just don't know off the top of my head, Your Honor.

THE COURT: How about Ms. Baily, do you remember?

MR. SULLIVAN: (Indiscernible) in mediation before.

THE COURT: Well, yeah, but that --

MS. BAILY: This is Melissa Baily for --

THE COURT: Go ahead.

MS. BAILY: Melissa Baily for Google.

I believe we did do a mediation in the context of this case that attempted to address more global issues.

THE COURT: Well, that's not a very satisfactory answer.

I think you should do a mediation on this case instead of trying to -- think about how this looks to the outside world that you're too big respectable companies arguing over these patents that may or may not have or should or should not have been issued in the first place.

And maybe the design-arounds are easy, I don't know, but why is it that you can't size up who's going to win or lose and just agree to mediate this case on the merits and then move on to the rest of your worldwide litigation somewhere else?

I want you to think about the burden you're placing on jurors. I want you to really think about that for a second. The jurors will be driving from places like Santa Rosa getting up extra early in the morning, getting home, well, I'd let them go at one, but they still have to -- then they go home, they got to pick up their children, they got to maybe go to work for a couple of hours, they have to do the -- in California, people get killed on the highway. The gangs shoot them from other cars.

They got to come all the way to San Francisco, deal with the tenderloin, that's what you're asking these people to do. And is your litigation worth it? I don't know, maybe. But that's what -- I get paid to do it, but the jurors, I see their problem. And I feel you're imposing a big burden on them and you should make a good-faith effort to mediate your

case instead of just carrying on the worldwide vendetta.

So think about it, please. All right, enough of my speech. Okay, I feel like I've run out of things to bring up with you. And --

MR. SULLIVAN: Your Honor?

THE COURT: Yes.

MR. SULLIVAN: Your Honor, this is Sean Sullivan.

I just have one question for you about the letter brief and doing it as a motion. As you know, the letter brief is about whether or not we're going to try issues related to the '615 Patent which is direct control which we believe you've already dealt with. We submitted a consent judgment order to help with that.

But I don't know how to get that motion noticed with Your Honor in time to have any meaningful impact on our pretrial order --

THE COURT: Oh, I'm going to go ahead and deal with it --

MR. SULLIVAN: -- pretrial conference --

THE COURT: Listen, I'm going to --

MR. SULLIVAN: Okay.

THE COURT: -- I hope the Federal Circuit reads this transcript someday and -- but those issues, the '615, if I understand it correctly, those miscellaneous claims are out of the case. O-U-T. And you're not going to get to reserve anything. You don't get to reserve and have a string to pull

it back in the event of A, B, and C. No, they're just out. \

On both sides, you're not going to waste the jury's time to try to find out if those things are invalid or not. That is so ridiculous. They've been held invalid by the PTAB and one invalid by me and I just cannot fathom the idea that either side would want to continue to litigate that.

So I don't even like your consent judgment because you want to have a string A, string B, and string C to bring it back to life. No, it is dead in the water for both sides. End of story. And we're not going to present that to the jury, and it's gone with prejudice. So you can take that issue up with the Federal Circuit if you don't like the ruling.

All right. Now you don't have to file a formal motion on that.

MR. SULLIVAN: Okay, thank you, Your Honor.

THE COURT: You're welcome.

All right. I'm going to hang up now, and thank you for reminding me. I knew there was something else that I wanted to bring up. But I need to run here, and I thank you for your time. And I'll see you on the pretrial conference. Good luck to both sides.

MS. BAILY: Thank you, Your Honor.

THE CLERK: Court is adjourned.

(Proceedings adjourned at 11:37 a.m.)

---OOO---

CERTIFICATE OF TRANSCRIBER

I, DIPTI PATEL, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court for the Northern District of California of the proceedings take on the date and time previously stated in the above-entitled matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken.

I further certify that I am not financially nor otherwise interested in the outcome of the action.

DIPTI PATEL, CET-997

LIBERTY TRANSCRIPTS Date: April 25, 2023